

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Rose Acre Farms)	FINDING OF VIOLATION
Seymour, Indiana)	NOTICE OF VIOLATION
)	
)	EPA-5-03-IN-03
Proceedings Pursuant to)	
Section 113(a)(1) of the)	
Clean Air Act, 42 U.S.C.)	
§ 7413(a)(1))	

NOTICE OF VIOLATION

The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation under Section 113(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(1). U.S. EPA finds that Rose Acre Farms (RAF) is violating Sections 502 and 503 of the Clean Air Act, 42 U.S.C. § 7661a-7661b, and the Indiana State Implementation Plan (SIP) as follows:

Statutory and Regulatory Background

Title V

1. U.S. EPA promulgated final interim approval of the Indiana Title V program (Part 70 program) on November 14, 1995 (60 Fed. Reg. 57188), and the program became effective on December 14, 1995. U.S. EPA promulgated the Part 70 permit program regulations under the authority of Section 502 of the Act, 42 U.S.C. § 7761a.
2. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states that it is unlawful for any person to operate a major source, except in compliance with a permit issued by a permitting authority under Title V of the CAA, 42 U.S.C. §§ 7661-7661f.
3. Section 503(a) of the CAA, 42 U.S.C. § 7661b(a), states that any source specified in Section 502(a), in this case a major source, shall become subject to a permit program, and required to have a permit on the later of the following dates: (1) the effective date of a permit program applicable to the source; or (2) the date such source becomes a major source.

4. Section 503(c) of the CAA, 52 U.S.C. § 7661b(c), states that no later than 12 months from the date on which the source becomes subject to an approved permit program, any person required to have a permit shall submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted.
5. The regulation at 40 C.F.R. § 70.2 defines "Part 70 source" as any source subject to the permitting requirements of Part 70, as provided in §§ 70.3(a) and 70.3(b).
6. The regulation at 40 C.F.R. § 70.3(a) states that a State program with whole or partial approval under Part 70 must provide permitting of, among other sources, any major source.
7. The regulation at 40 C.F.R. § 70.2 defines "major source" as any source emitting over 100 TPY of a single air pollutant or 10 TPY of a single HAP.
8. The regulation at 40 C.F.R. § 70.1(b) requires that all sources subject to Part 70 in Indiana shall have a permit to operate that assures compliance by the source with all applicable requirements.
9. The regulation at 40 C.F.R. § 70.5(a)(i) requires that all sources subject to Part 70 in Indiana that are first-time applicants for a Title V permit submit a complete Title V permit application within 12 months from the date the source becomes subject to the permit program.
10. The regulation at 40 C.F.R. § 70.7(b) requires, among other things, that no source subject to Part 70 may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a Part 70 program.

Construction Without a Permit

11. Section 32 IAC 2-1-03(a) prohibits construction or modification of any source or facility without first applying for and obtaining a construction permit from the commissioner.

Operation Without a Permit

12. Section 32 IAC 2-1-04(a) prohibits operation of any subject source or facility without first applying for and obtaining a permit to operate said source or facility from the commissioner.

Finding of Facts

13. In response to a CAA § 114 information request from U.S. EPA, RAF submitted a letter it received from the consulting firm Lambert Hamblin and the manufacturer Crown Iron Works Co., dated July 12, 1990. RAF requested Lambert and Crown to estimate VOC emissions for the soybean processing plant it proposed to build. In this letter, Lambert and Crown estimated VOC emissions for the proposed 500 TPD soybean processing plant to be 34 lb/hr, or 150 TPY.
14. The Indiana Department of Environmental Management (IDEM) issued RAF a permit to construct and operate a 600 TPD soybean processing plant on November 11, 1990. The permit required renewal in five years, or on November 11, 1995.
15. RAF began initial operation of the aforementioned 600 TPD soybean processing plant, located at Highway 258, Seymour, Indiana, in February of 1992.
16. In January of 2001, RAF installed an additional flaker and related conveying equipment in its Seymour plant. This installation raised plant production potential from 600 TPD to 750 TPD. RAF did not apply for a construction permit for this project.
17. On May 23, 2002, U.S. EPA conducted an air inspection at RAF.
 - A. RAF informed U.S. EPA that it has been operating with an expired permit, but was working on putting together an application.
 - B. RAF informed U.S. EPA that it installed an additional flaker and related conveying equipment in January, 2001, and did not receive a construction permit prior to the installation.
18. On August 5, 2002, RAF responded to a U.S. EPA CAA § 114 Request For Information by submitting data that shows actual

annual average solvent loss, and therefore actual annual average VOC emissions, for the years of 1996-2001. The data showed the following:

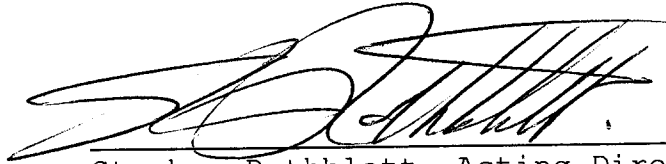
- a) actual annual average VOC emissions for the RAF facility for those years was **189.4 TPY**.
 - b) lowest annual VOC emission rate for those years was **148.1 TPY**.
 - c) actual average annual n-hexane loss, or actual annual average HAP emissions, for those years was **117.4 TPY**.
19. RAF is a major source in that the facility emits over 100 TPY of a single air pollutant, VOC, or 10 TPY of a single HAP, n-hexane.
20. U.S. EPA promulgated the final interim approval of the Indiana Part 70 program on November 14, 1995, and the program became effective on December 14, 1995. RAF, a major source, was subject to Part 70 immediately, or on December 14, 1995.

Violations

21. RAF, a major source, is required to apply for a Title V Permit within 12 months of becoming subject to a state Part 70 Permit Program. RAF is in violation of the regulations at 40 C.F.R. § 70.5(a)(i) for failing to submit a Title V Permit within 12 months of becoming subject to the Indiana Part 70 Permit Program.
22. Any major source subject to Part 70 may operate only under a permit that assures compliance with all applicable regulations, including a state Part 70 Program. RAF, a major source, is in violation of the regulations at 40 C.F.R. § 70.1(b) and 40 C.F.R. § 70.7(b) for operating without a required Title V Permit.
23. An emission source in Indiana must apply for a permit prior to installing any additional production equipment. RAF is in violation of regulations at Section 32 IAC 2-1-03(a) for constructing a flaker and related conveying equipment at the Seymour facility without first applying for and obtaining a construction permit.
24. An emission source must renew an expired operating permit to

continue operation. RAF is in violation of the regulations at Section 32 IAC 2-1-04(a) for continuing operation of the Seymour facility after November 11, 1995 without renewing its November 11, 1990 operating permit.

12/19/2002
Date


Stephen Rothblatt, Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING


I, Loretta Shaffer, certify that I sent a Finding of Violation/Notice of Violation, No. EPA-5-03-IN-03, by Certified Mail, Return Receipt Requested, to:

Alan Stout, Plant Manager
Rose Acre Farms, Soybean Processing Plant
Highway 258
Seymour, IN 47274

I also certify that I sent copies of the Finding of Violation/Notice of Violation by first class mail to:

David McIver, Chief
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206

on the 24th day of December, 2002.


Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 95864938